IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5839 of 2007()

Cr.No.372/07 of Nemom Police Station

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: PETITIONER/ACCUSED

SUDHAKARAN, AGED 45, S/O ARJUNAN,
MEL THOTTATHU VEEDU, MUKALOORMOOLA,
OOKODE P.O., VELLAYANI,
THIRUVANANTHAPURAM.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR

RESPONDENTS:

THE S.I. OF POLICE,
NEMOM POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5839 of 2007

Dated this the 1st day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Section 420 I.P.C. The crux of the allegations against the petitioner is that he had fraudulently induced the defacto complainant to part with amounts of Rs.50,000/- - Rs.30,000/- by cash and an amount of Rs.17,000/- by a cheque, promising to procure a job for him at the C-Dit Kendra. The job was not made available to the defacto complainant. The amount was not returned. The defacto complainant realised that the attempt transparently was to defraud him. It is, in these circumstances, that the complaint was filed. Crime has been registered. Investigation is in progress. The petitioner's application for anticipatory bail has been dismissed by the learned Sessions Judge, Trivandrum.

2. The learned counsel for the petitioner submits that the transaction did not take place really in the manner alleged by the prosecution. It was a case of the defacto complainant receiving huge amount from the petitioner. The cheque in question was handed over in repayment of the earlier liability. The allegation that the defacto complainant was fraudulently induced to part with amount is incorrect.

The petitioner apprehends imminent arrest. The petitioner may be saved of the trauma of undeserved arrest and detention by issue of directions under Section 438 Cr.P.C, prays the learned Public Prosecutor .

3. The learned Public Prosecutor opposes the application. All the available indications point to the truth of the assertions of the defacto complainant. The petitioner has to be interrogated. The allegations are serious. The allegations are prima facie found to be sustainable. The petitioner may not be permitted to arm himself with an order of anticipatory bail at this early stage. An explanation for receipt of an amount of Rs.17,000/- by cheque which the petitioner attempts to advance now may not be accepted by this Court, submits the learned Public Prosecutor . Having considered all the relevant inputs, I am persuaded to accept the objections of the learned Public Prosecutor . I am unable to perceive any features in this case which justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. He must then seek regular bail.

4. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-